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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/708/2017

Date of order: 8.11.19.

Bijoy Das.....Applicant

Mr. T.K.Biswas.....Advocate for the Applicant

VERSUS

Union of India &Ors.Respondents

Mr. K.Prasad.....Advocate for the Respondents

Coram :

The Hon'ble Ms. Bidisha Banerjee, Judicial Member
The Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether it needs to be circulated to other Benches of Tribunal?

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A./350/708/2017

Heard on 04.11.2019
Date of Order: 8.11.19Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Bijoy Das,
son of Ashoke Kumar Das,
aged about 43 years, now un-employed,
residing at Nutan Pally-2 (Madral),
Bijaynagar, PO- Naihati, PS- Jagaddal,
Dist.- North 24 Parganas, Pin-743165.

.....Applicant

Vrs.

1. Union of India
Service through the Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhavan, New Delhi-110011.
2. The Chief Post Master General,
West Bengal Circle, Yogayog Bhawan,
12, C.R. Avenue, Kolkata-700012.
3. Director (Establishment)
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110001.
4. The A.D.G. (GDS/PCC) & C.P.I.O.,
Department of Posts,
Ministry of Communication & I.T.,
Dak Bhavan, Sansad Marg,
New Delhi-110001.

5. Sr. Superintendent of Post Offices,
North Presidency Division,
Barrackpore, Kolkata-700120.

.....Respondents

For the Applicant(s): Mr. T.K.Biswas, Counsel

For the Respondent(s): Mr. K.Prasad, Counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant in this O.A. has sought for the following reliefs:

- "a) An order directing the respondents to obey their own office order dated 28.05.1998 (Annexure A-1) and the Hon'ble High Court's order dated 27.1.2009 (Annexure A-3) without any more delay and further directing the respondents to allow the applicant to join his duty in the post of E.D.S.V. without further delay and also set aside the order dated 27.2.2009 (Annexure A-4) which was issued in illegal manner;*
- b) An order directing the respondents to reply the representation dated 21.3.2017 (Annexure A-7) within specific period of time.*
- c) Any other order, orders as to this Hon'ble Tribunal may deem fit and proper."*

2. Applicant's grievance in a nutshell is that he was selected for appointment against the post of EDSV, Jagatdal Post Office. He fulfilled all the criteria for selection in terms of rules that applied to such selection, held in 1998, including residence near the Post Office but he was not granted appointment. He has alleged that the respondents, having failed to dispose of his representation, have acted illegally, which is bad in law having violated their own office order as well as order passed by the Hon'ble High Court. In support of his contention that the E.D. Agents were supposed to reside near the place of their work, the applicant has cited the following paragraph from the ED Staff Rules;

"4. Residence:

- (i) The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation.*
- (ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate, i.e. they should be permanent residents of the delivery jurisdiction of the post office.*
- (iii) ED Agents of other categories may, as far as possible, reside in or near the place of their work (Letters No. 5-9/72-EL Cell, dated 18-8-1973 and No. 43-312/78-Pen., dated 20-1-1979, stand modified to this extent)."*

3 At hearing, Ld. Counsel for the applicant would submit that the applicant's previous application No. TA 14/1999 stood dismissed by this Tribunal but the dismissal order, when challenged before the Hon'ble High Court through W.P.C.T.No. 50/2008, was set aside with the direction upon respondent No.3 as under:

".....to consider the application filed before the learned Tribunal treating the same as a representation in the light of Rule 4(iii) Chapter IV under the heading Method of Recruitment of Postal EDA Conduct and Service Rules.

While doing so, the Respondent no.3 would give an opportunity of hearing to the Petitioner as also to such other candidates whom it may deem fit and proper and to pass speaking order within a period of two weeks from the date of communication of this order.

This Application is, accordingly, disposed of. There will be no order as to costs.

According to the applicant, since the E.D.A. Conduct and Service Rules stipulates that the E.D. Agents had to reside near their place of work and not necessarily within the delivery jurisdiction of the Post Office, the applicant was eligible for such appointment but wrongly denied to favour others.

4. Per contra, Ld. Counsel for the respondents would submit that this Tribunal had already dismissed the application on the following ground:

"5.no irregularity or illegality in the action of the respondents in asking the applicant to produce proof of residence within the post-village and produce necessary certificate in that regard from the concerned municipality. He having failed to do so, the appointment was given to the next person in the merit list who did not accept the offer and thereafter the 3rd person was given the appointment but he too left the job. In such circumstances the entire selection was cancelled.

6. Besides merit, the respondents have also taken the point of maintainability as according to them the applicant had earlier filed an O.A. before this Tribunal in which he could not succeed thereafter he has filed the instant Writ Application afresh and thus it is barred by res-judicata. However, no details of the earlier O.A. have been produced before us and accordingly we have not considered this point taken by the respondents.

7. For the reasons stated above we find no merit in this O.A. and accordingly it is dismissed. No costs."

However, in view of the direction of the Hon'ble High Court, he was given a personal hearing and a speaking order was issued on 24.02.2009. The order passed by Sr. Superintendent of Post Offices after affording hearing to the applicant is extracted herein below for clarity:

DEPARTMENT OF POSTS, INDIA.
O/O THE SR. SUPERINTENDENT OF POS. NORTH PRESY. DIVN. BKP. KOL-120.

As per direction of the Hon'ble High Court Calcutta dated 27.01.2009 in/c/w WPCT 50 of 2008 in the matter of Bijoy Das -vs- Union of India & Others a personal hearing was given to Sri Bijoy Das, S/O Sri Ashok Kr. Das, Vill - Natunpally No.2(Madral), Bijoynagar, PO - Naihati, Dist - 24 Pnns(N) on 24.02.2009 and the undersigned heard in details his sayings regarding selection of EDSV, Jagatdal PO. The direction of the Hon'ble High Court is to be given due consideration regarding the application filed before the Ld. Tribunal treating the same as a representation in the light of Rule 4(iii) Chapter IV under the heading method of recruitment of Postal EDA, Conduct and Service Rules. In fact, Sri Bijoy Das did not submit any application before the Tribunal. Actually he filed a writ petition vide WP. no. 16307(W) of 1998 before the Hon'ble High Court Calcutta which was transferred to the Hon'ble Central Administrative Tribunal by an Order of Hon'ble High Court dated 16.11.98 and re-numbered as TA 14 of 1999.

The applicant in Para 5 of WP no. 16307(W) of 1998 states that the Sub Postmaster, Jagatdal PO directed Sri Bijoy Das to furnish documentary proof as regard his residence within the jurisdiction of Jagatdal PO and this condition was not stated in the notice of the Employment Exchange dated 16.04.1998. This is not the correct picture. The Para 1 in which the condition of taking up residence under the delivery jurisdiction of Jagatdal PO before appointment was clearly mentioned in the advertisement published through the Employment Officer, Sub Regional Employment Office, Barrackpore, 743 101 vide Sub Postmaster, Jagatdal PO no. EDSV/97-98 dated 09.03.1998. The verbatim reproduction of Para 1 is as follows :- " he should a permanent resident of the delivery jurisdiction of Jagatdal PO. Outside candidate may be apply for the post. But the selected candidate must take up his residence under the delivery jurisdiction of Jagatdal PO before appointment".

Sri Bijoy Das was a provisionally selected candidate (not allowed to join as stated in Para 5 of application) in order of merit and he was asked by the Sub Postmaster, Jagatdal PO under his letter no. EDSV/98-99 dated 28.05.1998 to submit documentary proof as regards taking up residence under the delivery jurisdiction of Jagatdal PO giving 15 days time. Sri Das did not able to take up his residence within delivery jurisdiction of Jagatdal PO which is required under Rule 3 Note II(vii) which states residence in post village/in the delivery jurisdiction of the post office shall be mandatory for a Sevak (previously known as Exura Departmental Agent).

The instructions contained in Para 4(iii) of method of recruitment of Section IV of Swamy's Compilation of Service Rules for Postal Gramin Dak Sevak states that ED agents of other categories may as far as possible reside in or near the place of their work. "Reside in or near the place of their work" in instruction 4(iii) corroborates the same implication as in Rule 3 Note II(vii). Sri Das had been given a reasonable opportunity by the appointing authority (SPM, Jagatdal PO) for taking up residence within the delivery jurisdiction of Jagatdal PO but Sri Das failed to avail this opportunity. As Sri Das failed to take up his residence within the delivery jurisdiction of Jagatdal PO the next suitable candidate in merit Sri Jayanta Patra who is also a candidate not residing within the delivery jurisdiction of Jagatdal PO had been given the opportunity of provisional selection for the post of EDSV, Jagatdal PO vide SPM, Jagatdal PO letter no. EDSV/98-99 dated 03.02.1999 but Sri Patra also failed to take up residence in accordance with Rule 3 Note II(vii) and instruction 4(iii) of Chapter IV. Hence the chance of provisional selection went to next suitable candidate in merit Sri Abhijit Chakraborty who is also

not a resident under the delivery jurisdiction of Jagatdal PO but had taken up his residence in the house of Mum Chand Agarwal under the delivery jurisdiction of Jagatdal PO and accordingly he had been allowed to join the post of EDSV, Jagatdal PO on 14.07.1999(F/N). Immediately after his joining the vacant post of EDSV, Jagatdal PO had been filled up. Therefore the process of recruitment of EDSV, Jagatdal PO was thus concluded and there is no declared vacancy to the post of EDSV, Jagatdal PO at present.

Hence appointment to the post of EDSV, Jagatdal PO of the applicant was not considered eligible and after filling up the post on 14.07.1999 the question does not arise at present.

Thus the order of Hon'ble High Court Calcutta on 27.01.09 is complied with by giving this speaking order.

5. Ld. Counsel for the applicant would vociferously allege that when the Hon'ble High Court had directed the authorities to consider representation in the light of Rule 4(iii) Chapter IV under the heading Method of Recruitment of Postal EDA Conduct and Service Rules, it ought to have been considered in accordance with that rules.

6. We heard Ld. Counsels for the parties and perused the materials on record.

7. We infer the following:

(i) Assailing the speaking order dated 22.02.2009, the applicant had preferred O.A. No. 341/2009, which was dismissed with the following observation:

"9. It is evident that he has not taken up residence in Jagatdal PO. He has accordingly failed to meet the requirement. No case is made out to interfere with the orders passed by the Ld. Superintendent of Post Offices.

10. The OA is fit to be dismissed and is dismissed no order as to the costs."

(ii) The order was taken to the Hon'ble High Court by the applicant in W.P.C.T. No. 320/2012, which was also dismissed by the Hon'ble High Court having held as under:

"The petition has been filed against the order in OA-341 of 2009 passed by the Central Administrative Tribunal, Calcutta Bench

on 19th June, 2012. The Petitioner had applied for being appointed as Extra-Departmental Stamp Vendor at Jagatdal. His name was sponsored by the Employment Exchange. However, one of the conditions was that he would have to have a residence in the delivery jurisdiction, in case he was appointed.

The Petitioner indisputably does not have a residence in Jagatdal which is the delivery jurisdiction. Therefore, the question of appointing him does not arise.

An attempt was made by the learned Advocate for the Petitioner to submit that the vacancy exists even now. If that be the position, it is for the Respondents to advertise the vacancy for filling up the posts in accordance with the applicable rules.

The Petitioner has not been able to make out any case for consideration of his candidature and in our opinion, the Tribunal has rightly dismissed the Original Application. As and when the Petitioner fulfils the necessary criteria, he can always apply if the vacancy is advertised.

The petition is dismissed with no order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

8. In view of the above, since the applicant's right to be considered has been decided by this Tribunal and it has been held by the Hon'ble High Court in no uncertain terms that one of the conditions of appointment was a residence in delivery jurisdiction and the petitioner indisputably did not have a residence in Jagatdal, i.e. in the delivery jurisdiction of the post office, the question of appointing him did not arise.

The Hon'ble High Court had permitted the respondents to re-advertise the vacancy in accordance with the applicable rules and allowed the applicant to apply against the said advertisement if he fulfilled the necessary criteria. Since, the applicant has time and again harped on the same thing and has failed

to establish that despite being eligible he was not considered by the respondent authorities in the subsequent selection process, we are afraid no relief can be granted to the applicant by this Tribunal. Accordingly, the O.A. is dismissed. No costs.



(Dr. Nandita Chatterjee)
Member (A)



(Bidisha Banerjee)
Member (J)

RK

